MHM Trend Station Sdn Bhd & Ors v Petronas Dagangan Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL NO P-02–875 OF 2006
GOPAL SRI RAM FCJ, SULONG MATJERAIE AND AHMAD MAAROP JJCA
27 APRIL 2009

Contract — Breach — Licence agreement — Licence 'to enter upon and operate' petrol station — Whether respondent entitled to enter upon and retake possession upon breach — Whether appellant becomes trespasser upon termination of licence — Whether landlord tenant relationship existed to warrant application of s 7(3) of the Specific Relief Act 1950

This was an appeal against the order of the High Court refusing the appellant an injunction to restrain the respondent from retaking possession of a petrol station from the appellant. The parties entered into a dealership agreement, under which terms the respondent granted the appellant a licence 'to enter upon and operate' the petrol station. The licence was subject to several conditions. It was the case for the respondent that the appellant breached several terms set out in the agreement. The particulars of the breaches were provided by the respondent to the appellant in a letter dated 6 December 2005. The issue which required the courts determination was whether the respondent was entitled to enter upon and retake possession of the petrol station without an order of the court in that behalf.

Held, dismissing the appeal with costs:
At common law, where a licence is terminated, the licensee becomes a trespasser and the court in the exercise of its jurisdiction and acting on equitable principles will ordinarily refuse injunctive relief in such a case; *Tee Than Song v Caltex Oil Malaysia Ltd* [1970] 1 MLJ 68 referred. In the present case the common law position applied with full force. It follows that the learned judge was entirely correct in refusing the injunction sought. Section 7(3) of the Specific Relief Act 1950, as referred by the appellant's counsel, has no application in the present case as the section used the words 'where a specific immovable property has been let under a tenancy' ie it was in reference to the landlord and tenant relationship, which was absent on the facts. (see paras 3-4)

[Bahasa Malaysia summary

Ini adalah rayuan terhadap perintah Mahkamah Rayuan menolak perayu injunksi untuk menghalang responden daripada mengambil semula milikan stesen petrol daripada perayu. Pihak-pihak memasuki perjanjian perniagaan, yang di bawah termanya, responden memberikan perayu lesen untuk 'to enter

and operate' stesen petrol tersebut. Lesen tersebut tertakluk kepada beberapa syarat. Adalah kes responden bahawa perayu memungkiri beberapa terma yang terkandung di dalam perjanjian. Butir-butir kemungkiran adalah seperti yang dinyatakan oleh responden kepada perayu di dalam surat yang bertarikh 6 Disember 2005. Isu yang perlu dipertimbangkan oleh mahkamah adalah sama ada responden berhak untuk masuk dan mengambil semula milikan stesen petrol tanpa perintah mahkamah untuk berbuat demikian.

Diputuskan, menolak rayuan dengan kos:
Dalam *common law*, di mana lesen ditamatkan, pemegang lesen menjadi penceroboh dan mahkamah dalam melaksanakan bidang kuasanya dan bertindak atas prinsip berekuiti akan pada biasanya menolak relief penghalangan di dalam kes sedemikian; *Tee Than Song v Caltex Oil Malaysia Ltd* [1970] 1 MLJ 68 dirujuk. Di dalam kes ini kedudukan *common law* beraplikasi secara sepenuhnya. Berikutan itu, hakim yang bijaksana betul secara keseluruhannya dalam menolak injunksi yang dipohon. Seksyen 7(3) Akta Relief Spesifik 1950, yang dirujuk oleh peguam perayu, tidak mempunyai aplikasi di dalam kes ini kerana seksyen tersebut menggunakan perkataan-perkataan 'where a specific immovable property has been let under a tenancy' iaitu ia merujuk kepada hubungan tuan tanah dan penyewa, yang tidak ada di dalam fakta. (lihat perenggan 3-4)]

Notes

For cases on breach of contract generally, see 3(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 2566-2823

Cases referred to

Tee Than Song v Caltex Oil Malaysia Ltd [1970] 1 MLJ 68, FC (refd)

Legislation referred to

Specific Relief Act 1950 s 7(2), s 3

Appeal from: Civil Suit No 22–784 of 2005 (High Court, Pulau Pinang)

Darshan Singh (Darshan Singh & Co) for the appellant.
Ahmad Fadzli bin Abdul Salam (Mohd Akhir & Partners) for the respondent.

Gopal Sri Ram FCJ (delivering judgment of the court):

[1] This is the judgment of the court.

[2] This appeal is directed against the order of High Court of Penang refusing the appellant an injunction to restrain the respondent from retaking possession of a petrol station from the appellant. The parties to this litigation had entered into a dealership agreement. Under the terms of that agreement the

respondent granted the appellant a licence 'to enter upon and operate' the petrol station in question. The licence was subject to several conditions. It is the case for the respondent that the appellant breached several terms set out in the dealership agreement. Particulars of the breaches were provided by the respondent to the appellant in a letter dated 6 December 2005.

[3] The only issue before us is whether the respondent is entitled to enter upon and retake possession of the petrol station in question without an order of court in that behalf. At common law, where a licence is terminated, the licensee becomes a trespasser and the court in the exercise of its jurisdiction and acting on equitable principles will ordinarily refuse injunctive relief in such a case. If authority is required for this proposition you need look no further than *Tee Than Song v Caltex Oil Malaysia Limited* [1970] 1 MLJ 68. But, says learned counsel for the appellant, that principle has been altered by statute. And he refers us to s 7(2) of Specific Relief Act 1950. That subsection reads as follows:

> Where a specific immovable property has been let under a tenancy, and that tenancy is determined or has come to an end, but the occupier continues to remain in occupation of the property or part thereof, the person entitled to the possession of the property shall not enforce his right to recover it against the occupier otherwise than by proceedings in the court.

Subsection 3 provides as follows:

> In subsection (2) 'occupier' means any person lawfully in occupation of the property or part thereof at the termination of the tenancy.

[4] Now the operative words in the second sub-s of s 7 are 'where a specific immovable property has been let under a tenancy'. It is plain that the subsection postulates, a letting, that is to say the creation of the relationship of landlord and tenant. In the absence of such a relationship the subsection does not bite. So, really speaking, the appellant has no answer whatsoever to the assertion by the respondent of its rights under the dealership agreement. In our judgment the common law position as explained in *Tee Than Song v Caltex Oil Malaysia Limited* [1970] 1 MLJ 68 applies with full force to the facts before us. It follows that the learned judge was entirely correct in refusing the injunction sought.

[5] For the reasons already given, the appeal is dismissed. The appellant must pay the respondent the costs of this appeal. The deposit in court shall be paid out to the respondent to account of its taxed costs. We affirm the orders made by the High Court.

Appeal dismissed with costs.

Reported by Fauzi Ibrahim